



# Update

July, 1976

## LEGISLATIVE UPDATE

TO: HSUS Staff and Regional Directors

### Introduction

The "Legislative Update" is composed of four sections. Section I outlines the progress of animal welfare-related bills through Congress. Section II presents new bills introduced into Congress since the last "Legislative Update" and is organized topically. Section III lists the same new bills by number with a cross-reference to the topical subsection of Section II. Section IV is a potpourri of short articles describing recent developments in state legislation, enforcement of federal animal welfare laws, animal welfare-related litigation and miscellaneous matters.

### I. STATUS OF BILLS PENDING IN CONGRESS

This Section outlines whatever Congressional and Presidential action has been taken on bills listed in the June and October, 1975, and February, 1976, issues of "Update" as having been introduced into Congress. Those bills which were merely referred to a Committee but which have had no further action taken on them are not included herein.

#### S. 229 - Sen. Kennedy (D-Mass.)

(To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972).

Reported out of Senate Committee on Commerce	
with amendments. Senate Report 94-109 . . . . .	4/7/75
Passed Senate as reported . . . . .	4/14/75
To House Committee on Merchant Marine and	
Fisheries . . . . .	4/15/75
Hearing in House Committee on Merchant	
Marine and Fisheries . . . . .	6/10/75
Passed House, with amendments, in lieu	
of H.R. 10229 . . . . .	2/17/76

S. 1941 - Sen. Weicker (R-Conn.)

[To amend the Federal Animal Welfare Act of 1966, as amended, to assure humane treatment of certain animals and for other purposes. (Provides for health certification, minimum age requirements with respect to factors determined by the Secretary to be relevant to assuring the humane treatment of animals in the course of their transportation in commerce.)]

Hearing in Senate Committee on Commerce . . . 11/20/75  
Reported out of Senate Committee on  
Commerce with amendments, Senate  
Report 94-580 . . . . . 12/18/75  
Passed Senate as reported . . . . . 12/18/75  
To House Committee on Agriculture . . . . . 12/19/75  
Discharged from House Committee on  
Agriculture . . . . . 2/9/76  
Passed House, with amendments, in  
lieu of H.R. 5808 . . . . . 2/9/76  
Senate appoints conferees . . . . . 3/4/76  
House appoints conferees . . . . . 3/9/76  
Conference report submitted to House.  
House Report 94-976 . . . . . 3/20/76  
Conference report submitted to Senate.  
Senate Report 94-727 . . . . . 3/30/76  
Conference report agreed to by House . . . . . 4/6/76  
Conference report agreed to by Senate . . . . . 4/7/76  
Signed by President. Public Law 94-279 . . . 4/23/76

S. 2334 - Sen. Moss (D-Utah)

(To amend section 15(B) of the Endangered Species Act of 1973 in order to extend the appropriation authorization).

Hearing in Senate Committee on Commerce . . . 5/6/76

S.2555 - Sen. Haskell (D. Colo.)

(To establish a national rangeland rehabilitation and protective program in order to reverse the decline in productive capability of Federal Rangelands so as to provide the benefits of increased soil and water-shed stability, protection of water quality, and the maintenance of present water production levels in the forage areas with its consequent rise in livestock production, enhancement of wildlife habitat, reduced flood danger, and economic stabilization of communities and individuals dependent on this land.)

Reported out of Senate Committee on Interior  
and Insular Affairs with amendments.  
Senate Report 94-761 . . . . . 4/23/76  
Passed Senate with amendments . . . . . 5/3/76  
To House Committee on Interior and  
Insular Affairs . . . . . 5/4/76

S. 3130 - Sen. Magnuson (D-Wash.)

(To amend the Marine Mammal Protection Act of 1972 in  
order to prohibit the taking of the killer whales.)

Reported out of Senate Committee on  
Commerce with amendments. Senate  
Report 94-709 . . . . . 3/24/76  
Passed Senate as reported . . . . . 3/29/76  
To House Committee on Merchant Marine  
and Fisheries . . . . . 3/30/76  
Hearings in House Committee on Merchant  
Marine and Fisheries . . . . . 5/4/76

H.R. 2935 - Rep. Whitehurst (R-Va.)

(To amend the Federal law relating to the protection,  
management, and control of wild free-roaming horses and  
burros on public lands and to authorize the Secretary of  
Interior to use aircraft and motorized vehicles in the man-  
agement and control of wild, free-roaming horses and burros.)

Hearing in the House Committee on  
Interior and Insular Affairs. . . . . 1/26/76

Frantz Dantzler, HSUS Director of Field Service and In-  
vestigations, testified against allowing the use of aircraft  
and motorized vehicles in the management of wild horses and  
burros. In addition, Dantzler questioned the bill's provision  
that would permit private individuals to adopt excess animals  
from the Bureau of Land Management, pointing out the lack of  
procedures for insuring that these animals receive humane  
treatment.

H.R. 5808 - Rep. Foley (D-Wash.)

[To amend the Federal Laboratory Animal Welfare Act of  
1966, as amended, to assure humane treatment of certain ani-  
mals, and for other purposes. (Provides for health certifica-  
tion and minimum age requirements for animals traveling in

interstate commerce, and prohibits interstate shipment of animals to be used for animal fighting ventures, etc.))]

Hearings in House Committee on Agriculture . . . 9/9/75  
Reported with amendments, out of House  
Committee on Agriculture. House  
Report 94-801 . . . . . 1/29/76  
Passed House with further amendments . . . . . 2/9/76  
Passage vacated and S. 1941 passed in  
lieu thereof . . . . . 2/9/76

H.R. 8092 - Rep. Sullivan (D-Mo.)

(To extend the authorization for appropriations to carry out the Endangered Species Act of 1973.)

Hearing in House Committee on Merchant  
Marine and Fisheries . . . . . 2/6/76  
Passed House with amendments . . . . . 3/15/76  
To Senate Committee on Commerce . . . . . 3/16/76

H.R. 12460 - Rep. Bonker (D-Wash.)

(To amend the Marine Mammal Protection Act of 1972 in order to prohibit the taking of the killer whale.)

Hearing in the House Committee on Merchant  
Marine and Fisheries . . . . . 5/4/76

Representatives from Monitor, a consortium of which the HSUS is a member, testified in support of this legislation.

H.R. 12646 - Rep. Bonker (D-Wash.)

(To amend the Marine Mammal Protection act of 1972 in order to prohibit the taking of the killer whale.)

Hearing in the House Committee on Merchant  
Marine and Fisheries . . . . . 5/4/76

H.R. 13500 - Rep. Conable (R-N.Y.)

(To amend the Internal Revenue Code of 1954 to allow tax-exempt organizations to carry on, within specified dollar amount limits, propaganda and other activities to influence legislation without losing their tax exempt status.)

Hearing in House Committee on Ways and  
Means . . . . . 5/12/76  
Reported out of House Committee on Ways  
and Means with amendment. House  
Report 94-1210 . . . . . 6/2/76  
Passed House, with amendments . . . . . 6/8/76  
To Senate Committee on Finance . . . . . 6/10/76

H.R. 13711 - Rep. Rogers (D-Fla.)

(To amend the House Protection Act of 1970 to prohibit the showing, exhibition, sale, or auction of a "sored" horse. Authorizes the Secretary of Agriculture to establish regulations for the enforcement of the Act and imposes penalties for violations.)

Reported out of the House Committee on  
Interstate and Foreign Commerce with  
no amendments. House Report 94-1174 . . . . 5/15/76

H.R. 13777 - Rep. Melcher (D-Mont.)

[To establish a public lands policy by directing the Secretaries of the Interior and Agriculture to prepare and maintain an inventory of all public lands and their resources. Establishes regulations relating to the management, use, development, and conveyance of public and National Forest System lands and the authority of the Secretary of the Interior and the Secretary of Agriculture with respect thereto. (A section in the Act provides the Secretaries with the authority to use aircraft and other mechanized equipment in the management of wild horses and burros, provided that all such operations are directly supervised by Federal personnel and only humane procedures are followed. Additionally, it permits the removal and sale of excess animals if it is determined that their habitat is unable to sustain the existing population with a proviso that the recipients of these surplus animals must provide written assurance that the animals will receive humane treatment and care. Furthermore, it forbids either the unnecessary destruction, or inhumane disposal of wild horses and burros)].

Reported out of the House Committee on  
Interior and Insular Affairs. House  
Report 94-1163 . . . . . 5/15/76

H.R. 13865 - Rep. Leggett (D-Cal.)

[To amend the Marine Mammal Protection Act of 1972 with respect to the taking of marine mammals incidental to the course of commercial fishing operations. This bill would weaken the Marine Mammal Protection Act by allowing the Department of Commerce to continue to issue permits which allow the "incidental" taking of dolphins. In doing so, it fails to set a timetable for achievement of zero mortality, weakens the Optimum Sustainable Population provision, fails to provide for the humane taking of dolphins, and provides no new funding for research of either dolphin population levels or more humane fishing equipment. On the positive side the bill does provide for a ban on the importation of commercial fish products which have been caught with methods which result in the serious injury or death of marine mammals in excess of United States standards as determined by the Secretary of the Treasury. Furthermore, an amendment offered by Congressman McCloskey (R-Cal.), provides for a full observer program to monitor the Act. (This bill was introduced in an attempt to circumvent a recent decision by a Federal District Judge which, if upheld by higher courts, will end the "incidental" taking of dolphins. This case is currently pending in the United States Court of Appeals for the District of Columbia.)]

Hearing in the House Committee on Merchant  
Marine and Fisheries . . . . . 5/20/76

Patricia Forkan, HSUS Program Coordinator, testified against this bill, favoring the enforcement of the Marine Mammal Protection Act as it presently reads.

H.R. 14032 - Rep. Eckhardt (D-Tex.)

[Toxic Substances Control Act...would require new chemicals to be tested prior to marketing to determine effects on human health and the environment. If passed this would require an increase in the number of animals used in laboratory testing. However, an amendment offered by Rep. Maguire (D-N.J.) authorizes the Secretary of HEW to begin emphasizing work in alternative methods of testing now being developed such as the use of artificially grown cells and bacteria strains sensitive to toxic and carcinogenic substances. This amendment will help alleviate the demand for animal subjects.]

Reported out of House Committee on Commerce.  
House Report 94-1341. . . . . 7/14/76

(H.R. 14032's Senate Companion Bill, S. 3149, has passed the Senate and is currently in the House Committee on Commerce.)

H.J.R. 738 - Rep. McCloskey (R-Cal.)

(Joint resolution providing for Federal participation in preserving the Tule Elk population in California by making certain Federal lands under the jurisdiction of the Secretaries of Interior and Defense reasonably available for the preservation and grazing of Tule Elk.)

Reported out of the House Committee on  
Merchant Marine and Fisheries with  
no amendment. House Report 94-845 . . . . 3/15/76  
Passed House as reported . . . . . 3/15/76  
To Senate Committee on Commerce . . . . . 3/16/76

H.J.R. 923 - Rep. Bell (R-Cal.)

(To save the great whales from extinction by amending the Fisherman's Protective Act of 1917 to impose an embargo on the products of certain foreign enterprises engaged in commercial whaling.)

Hearing in the House Committee on Merchant  
Marine and Fisheries . . . . . 4/30/76

At the Hearing, Patricia Forkan, HSUS Program Coordinator, testified in support of this bill.

II. BILLS INTRODUCED INTO CONGRESS

This Section describes only those bills introduced into Congress since the February, 1976 "Legislative Update." Therefore, a complete roster of animal welfare-related bills introduced into the 94th Congress can be obtained only by referring to the June, October, 1975, and February, 1976, "Legislative Update" publications in addition to the present issue.

Endangered Species

H.R. 12057 - Rep. Oberstar (D-Minn.)

To amend the Endangered Species Act to provide compensation to persons suffering losses due to predators protected under the Endangered Species Act. To the House Committee on Merchant Marine and Fisheries.

Identical House Bills: H.R. 12554 - Rep. Oberstar  
(D-Minn.)

## General Animal Welfare Legislation

### H.R. 11823 - Rep. Koch (D-N.Y.)

To establish a Commission on the Humane Treatment of Animals to study a variety of problem areas in animal welfare, including farming practices, laboratory research, the domestic pet industry, zoos, wildlife preservation programs, the transportation of animals and trapping.

The Commission would be composed of eleven members, seven of whom are to be appointed by the President, who is supposed to "ensure that relevant special interest groups, including animal welfare societies, receive adequate representation on the Commission. The bill calls for the Commission to submit a final report to the President and Congress within two years. (This bill is identical to H.R. 11112.) To the House Committee on Agriculture.

Identical House Bills: H.R. 12147,  
H.R. 13232, and H.R. 13233 all by  
Rep. Koch (D-N.Y.)

### H.R. 11847 - Rep. Brown (D-Cal.)

To amend the Federal Meat Inspection Act for purposes of requiring that meat inspected and approved under such Act be produced only from livestock slaughtered in accordance with Humane methods. To the House Committee on Agriculture.

## Horses and Burros

### S.3089 - Sen. Metcalf (D-Mont.)

To amend the Federal law relating to the protection, management, and control of wild free-roaming horses and burros on public lands. It authorizes the Secretaries of Interior and Agriculture to sell, donate, or otherwise dispose of excess wild free-roaming horses and burros on public lands. Establishes procedures to be followed to insure humane treatment of such animals. (Authorizes the use of aircraft and motorized vehicles on public lands in a manner to be consistent with the purposes of the Act.) To the Senate Committee on Interior and Insular Affairs.



H.R. 13038 - Rep. Whitehurst (R-Va.)

To amend the Federal law relating to the protection, management, and control of wild free-roaming horses and burros on public lands. It authorizes the Secretaries of Interior and Agriculture to sell, donate or otherwise dispose of excess wild free-roaming horses and burros on public lands. Establishes procedures to be followed to insure humane treatment of such animals. (Authorizes the use of aircraft and motorized vehicles on public lands in a manner to be consistent with the purposes of this Act.) To the House Committee on Interior and Insular Affairs and to the House Committee on Merchant Marine and Fisheries.

H.R. 13711 - Rep. Rogers (D-Fla.)

To amend the Horse Protection Act of 1970 to prohibit the showing, exhibition, sale, or auction of a "sored" horse. (Authorizes the Secretary of Agriculture to establish regulations for the enforcement of this Act and imposes penalties for violations.) To House Committee on Interstate and Foreign Commerce. (See "Status of Bill" section for recent action taken.)

Humane Organizations Generally

H.R. 13500 - Rep. Conable (R-N.Y.)

To amend the Internal Revenue Code of 1954 to allow tax-exempt organizations to carry on, within specified dollar amount limits, propaganda and other activities to influence legislation without losing their tax-exempt status. To the House Committee on Ways and Means. (See "Status of Bills" section for current action taken.)

Marine Mammals

H.R. 13865 - Rep. Leggett (D-Cal.)

To amend the Marine Mammal Protection Act of 1972 with respect to the taking of Marine Mammals incidental to the course of commercial fishing operations. This bill would weaken the Marine Mammal Protection Act by allowing the Department of Commerce to con-

tinue to issue permits which allow the "incidental" taking of dolphins. In doing so it fails to set a timetable for achievement of zero mortality, weakens the Optimum Sustainable Population provision, fails to provide for the humane taking of dolphins, and provides no new funding for research of either dolphins population levels or more humane fishing equipment. On the positive side the bill does provide for a ban on the importation of commercial fish products which have been caught with methods which result in the serious injury or death of marine mammals in excess of United States standards as determined by the Secretary of the Treasury. Furthermore, an amendment offered by Congressman McCloskey (R-Cal.) provides for a full observer program to monitor the Act. (This bill was introduced in an attempt to circumvent a recent decision by a Federal District Judge which, if upheld by higher courts, will end the issuance of permits for the "incidental" taking of dolphins. This case is currently pending in the United States Court of Appeals for the District of Columbia.) To the House Committee on Merchant Marine and Fisheries.

Identical House Bill: H.R. 13883 - Rep. Anderson  
(D-Cal.)

### Migratory Birds

H.R. 13751 - Rep. Smith (R-Neb.)

To prohibit the acquisition by the United States of lands used for migratory bird conservation unless such acquisition is approved by the voters of the county in which the lands are located. To the House Committee on Merchant Marine and Fisheries.

### Trapping

H.R. 12204 - Rep. Anderson (D-Cal.)

To discourage the use of painful devices in the trapping of animals and birds by instructing the Secretary of Interior to establish criteria for traps which will either painlessly capture or instantaneously kill; to halt the interstate commerce of unapproved traps; to halt the use of unapproved traps on Federal lands; and to halt the entrance into interstate commerce of animals or

animal products captured by non-approved traps. To the House Committee on Merchant Marine and Fisheries. (Identical to H.R. 66).

Identical House bill: H.R. 12916 by Rep. Anderson (D-Cal.)

### Whales

#### S. 3130 - Sen. Magnuson (D-Wash.)

To amend the Marine Mammal Protection Act of 1972 in order to prohibit the taking of the killer whale. To the Senate Committee on Commerce.

Identical Companion Bills: H.R. 12460, and H.R. 12646 both by Rep. Bonker (D-Wash.)

#### H.J.R. 923 - Rep. Bell (R-Cal.)

To save the great whales from extinction by amending the Fisherman's Protective Act of 1917 to impose an embargo on the products of certain foreign enterprises engaged in commercial whaling. Jointly to the House Committee on Merchant Marine and Fisheries and to the House Committee on Ways and Means.

#### H.J.R. 955 - Rep. Bell (R-Cal.)

To save the whales from extinction. To the House Committee on Merchant Marine and Fisheries.

### Wildlife Refuges and Habitat

#### H.R. 13777 - Rep. Melcher (D-Mont.)

To establish a public lands policy by directing the Secretaries of the Interior and Agriculture to prepare and maintain an inventory of all public lands and their resources. Establishes regulations relating to the management, use, development and conveyance of public and National Forest System lands and the authority of the Secretary of the Interior and the Secretary of Agriculture with respect thereto. (A section in the Act provides the Secretaries with the authority to use aircraft and other mechanized equipment in the management of wild horses and burros, provided that all such

operations are directly supervised by Federal personnel and only humane procedures are followed. Additionally, it permits the removal and sale of excess animals if it is determined that their habitat is unable to sustain the existing population with a proviso that the recipients of these surplus animals must provide written assurance that the animals will receive humane treatment and care. Furthermore, it forbids the unnecessary destruction of these animals and/or inhumane procedures in their disposal.) To the House Committee on Interior and Insular Affairs.

### Wolves

#### H.R. 11650 - Rep. Whitehurst (R-Va.)

To require the Secretary of the Interior to make a comprehensive study of the wolf for the purpose of developing adequate conservation measures. To the House Committee on Merchant Marine and Fisheries.

Identical House Bill: H.R. 12236, H.R. 13037  
both by Rep. Whitehurst (R-Va.)

#### H.J.R. 840 - Rep. Whitehurst (R-Va.)

Joint resolution calling for an immediate moratorium on the killing of the eastern timber wolf. To the House Committee on International Relations.

Identical House Bill: H.J.R. 911 -  
Rep. Whitehurst (R-Va.)

### III. BILLS LISTED BY NUMBER WITH CROSS

#### REFERENCE TO SUBJECT MATTER

S. 3089 - See "Horses and Burros"  
S. 3130 - See "Whales"

H.R. 11650 - See "Wolves"  
H.R. 11823 - See "General Animal Welfare Legislation"  
H.R. 11847 - See "General Animal Welfare Legislation"  
H.R. 12057 - See "Endangered Species"  
H.R. 12147 - See "General Animal Welfare Legislation"

H.R. 12204	-	See "Trapping"
H.R. 12236	-	See "Wolves"
H.R. 12460	-	See "Whales"
H.R. 12554	-	See "Endangered Species"
H.R. 12646	-	See "Whales"
H.R. 12916	-	See "Trapping"
H.R. 13037	-	See "Wolves"
H.R. 13038	-	See "Horses and Burros"
H.R. 13232	-	See "General Animal Welfare Legislation"
H.R. 13233	-	See "General Animal Welfare Legislation"
H.R. 13500	-	See "Humane Organizations Generally"
H.R. 13711	-	See "Horses and Burros"
H.R. 13751	-	See "Migratory Birds"
H.R. 13777	-	See "Wildlife Refuges and Habitat"
H.R. 13865	-	See "Marine Mammals"
H.R. 13883	-	See "Marine Mammals"
H.J.R. 840	-	See "Wolves"
H.J.R. 911	-	See "Wolves"
H.J.R. 923	-	See "Whales"
H.J.R. 955	-	See "Whales"

#### IV. MISCELLANEOUS STATE LEGISLATION, FEDERAL REGULATIONS, COURT CASES, ETC.

##### Supreme Court Upholds Federal Protection of Wild Horses

On June 17, 1976, the Supreme Court of the United States reversed the ruling of a Federal District Court in New Mexico and upheld the constitutionality of the Wild Free-Roaming Horses and Burros Act of 1971, which placed all wild horses and burros on federal lands under the protection and management of the Departments of Interior and Agriculture in an effort to eliminate the indiscriminate slaughter and commercial exploitation of these animals. HSUS had filed a brief as amicus curiae (friend of the Court) in support of this landmark animal protection legislation.

In a carefully reasoned opinion written for a unanimous Court, Mr. Justice Marshall rejected the arguments of the State of New Mexico that the Property Clause of the U.S. Constitution gave the federal government only the narrow authority to protect and dispose of the federal lands. Rather, the Court held, that "the power over the public lands thus entrusted to Congress is without limitations" and that "the 'complete power' that Congress has over public lands necessarily includes the power to regulate and protect the wildlife living there."

Speaking to New Mexico's argument that such an expansive reading of the Property Clause encroaches upon traditional notions of state control over resident wildlife and upon the states' very sovereignty, the Court said that the states are free to enforce their police powers over wild animals within their respective boundaries, "[b]ut where those state laws conflict with the Wild Free-Roaming Horses and Burros Act, or other legislation passed pursuant to the Property Clause, the law is clear: the state laws must recede." The decision clearly enunciates the proposition that state regulation of wildlife on federal lands applies only insofar as it is not incompatible with, or restrained by, the paramount powers granted the federal government by the Constitution.

The decision is a substantial setback for hunting and local interests who have sought for years to remove control over wildlife on public lands from the more responsible federal authorities, which have in many instances tended to be more sensitive to preservationist and humane concerns than their state counterparts.

#### Lobby Spending Limits for Charities

Under a new bill, H.R. 13500, recently approved by the House Ways and Means Committee, the amount of expenditures a charitable organization, qualified to receive tax deductible contributions, could spend on lobbying would be specifically determined. Presently, such organizations must rely on a rather vague provision of the Internal Revenue Code which requires that no substantial part of their activities may be for attempting to influence legislation.

Under the bill such organizations could elect to come under provisions clarifying their position. They would be entitled to spend up to 20% of the first \$500,000 of the organization's annual charitable disbursement, and a decreasing percentage of additional charitable disbursements, with an absolute limitation of one million. Excess lobbying expenditures would be subject to a 25% excise tax and an organization would automatically lose its exemption if it exceeded over a four year period an average of 150% of the limitation.

#### Florida Enacts Anti-Animal Fighting Law

Florida Governor Reubin Askew recently signed into law a bill that bans animal fighting including dogfights and possibly cockfights. The bill forbids all public display of, and betting on animal fights. It does not, however, include cocks in the specific list of animals. The question of whether or not cockfighting is covered by the law is expected to be decided in the courts.

## New York Moves to Improve Enforcement of Animal Protection Laws

The New York State Assembly is currently considering a measure that would permit individuals, humane societies, state and local authorities to institute civil actions for injunctive relief in State Courts. The New York State Department of Law feels that the bill is necessary because, due to the lack of either time or personnel, the present criminal justice system is "incapable of adequately enforcing" animal protection laws.

## Polar Bear Pact Goes Into Effect

The first international agreement for the protection of Polar bears has become effective with the ratification of three of the five signatories. It is reported that the remaining two signatories, the United States and Denmark, will soon ratify the agreement. The Treaty "forbids the hunting, killing, or capture of polar bears, except for scientific research, conservation, or safety of the indigenous population."

## Suit Over Alaskan Wolves Appealed

The suit challenging the experimental extermination of all wolves in a 2 million acre area of Alaska is now on appeal before the Ninth Circuit U.S. Court of Appeals. (HSUS is among the thirteen environmental and protectionist groups challenging the action.) The experimental program is 75% financed by the U.S. Fish and Wildlife Service and will be executed, should the appeal fail, by the Alaskan Department of Fish and Game. Both agencies were named as defendants in the suit. The apparent purpose of the extermination program is to study the differential response of various prey species populations in the area to the complete absence of the chief predator species, the wolf.

Plaintiffs are contending that the defendant agencies initiated the program without adequately assessing the environmental impact of the program and following other procedures mandated by the National Environmental Policy Act.

The lower court ruled against plaintiffs based on the sparse human population (10 people) in the experimental area, which is approximately the size of Delaware and Rhode Island combined. With such a small resident human population, the lower court reasoned, there could be no significant effect on the quality of the "human environment," a remarkably crimped view of NEPA, which other courts have repeatedly declared protects undisturbed, uninhabited wilderness areas because of the value, however abstract, to human society of these areas' very character as wilderness.

### HSUS Expresses Concern Over Recent Impersonal Trends in Estate Administration

In a recent submission to a Florida Probate Court HSUS General Counsel Murdaugh Stuart Madden expressed the HSUS's concern over what appeared to be the callousness of banks and trust officers when called upon to deal with the precise wishes of persons with respect to their animals following the owner's death. The pleading went on to state:

"Although the financial interest of The Humane Society of the United States in this matter is de minimus, there is a very important matter of principle at stake since it is increasingly becoming the custom of professional trust officers, such as bank officials and others, to ignore the clear wishes and desires of testators and testatrixes when it comes to matters concerning the care and welfare of animals, and to substitute their own impersonal, computerized ideas of the way wills, estates and trusts should be 'administered'."

The case involves the disposition of a pet cat and turtle following the death of their owner. Although the late owner had left instructions that a particular person was to care for her pets and that a particular part of her estate was to be used to care for the pets, the executor of her estate is trying to get the court's permission to turn the animals over to the local animal control facility in order to facilitate the speedy disposition of the estate.

### Utah Humane Society Director Appeals to Federal Courts

In a very interesting case, claiming that a 1975 decision of the State Supreme Court has denied him his freedom-of-speech rights, the director of the Humane Society of Utah is petitioning to have a \$250,000 libel suit, in which he is the defendant, moved to federal court.

In State v. Phillips, the Utah State Supreme Court had ruled that the First Amendment is "simply, solely, expressly and utterly, nothing more and nothing less than a limitation upon the Congress of the United States and the power of the federal government" and hence is not applicable to Utah. Lonnie Johnson, director of the Humane Society of Utah, argues that the decision of the State Supreme Court would prevent him from asserting main defense in his libel suit - freedom of expression protected by the first and fourteenth amendments.

Mr. Johnson is being sued by a Vernal, Utah motel owner on grounds arising out of Mr. Johnson's campaign to get Vernal to upgrade its animal shelter. The motel owner claims that by



posting a billboard in Salt Lake City criticising Vernal's dog pound and by newspaper advertisement, radio advertisements, and statements to the press attempting to discourage tourism to Vernal and its local amusement park until conditions at the pound are improved, his business was "willfully and maliciously" damaged.

#### New York Dog Owners Rest Easier

A New York Civil Court Judge has ruled that Dog owners, at least in New York City, are not liable for the "amorous adventures of their pets and the resulting consequences." The decision resulted from a suit arising out of the loss of fecundity of a pedigreed miniature Schnauzer, Fifi.

The problem began when Fifi's owner left her alone in the backyard while she was in heat, while he went to answer the telephone. When he came out he found Fifi copulating with a male mongrel. After chasing the male out, the owner took Fifi to a veterinary in order to prevent pregnancy. The Veterinary administered the necessary shots. As a result, Fifi developed an infection that resulted in the removal of her uterus. Consequently, she could no longer be bred. Fifi's owner then sued the owner of the male mongrel for \$395 in damages.

In ruling for the defendant, the Court held that, "the owner of a dog is not rendered liable by the mere fact that while wrongfully on the land of another person, it does damage in following a natural propensity of its kind."

#### Seller of Underaged Rabbits Prosecuted

The Animal Rescue and Welfare League of Johnson City, Tennessee recently won a hard fought suit against Pet Luv Co. for selling underaged rabbits. Although Pet Luv Co. got off with a mere \$100.00 fine, the League's persistence and success in this case will hopefully deter future violations. Mrs. Joyce Poole, Secretary of the League, wrote HSUS Vice President, Burton M. Parks and offered the following advice (which is quoted in full herein) in prosecuting such cases, subject to local variations in the law:

"I believe humane organizations should be advised how to prepare for cases like this, as my lawyer did not know how. When one goes to buy a rabbit for the purpose of prosecuting, a witness should go along who will testify in court that they did so. Get the name of the person who rings up the sale. This is the person you should name on the warrant.

"Before taking out the warrant, however, you should take the rabbit to several reputable experienced rabbit breeders, take pictures of them examining the rabbits (2 or 3 photos of each one), take a witness with you, and get each breeder to sign a statement documenting his opinion of the age of the rabbit, dating it, and then sign it yourself with the witness also signing. Make xerox copies of the receipt for the purchase of the rabbit and any other papers you may use as evidence, as such evidence becomes the property of the court. You may need proof again in case the case is appealed or there is a counter-suit. Don't expect a lawyer to tell you these things."

#### New York Spay Law

The New York State Legislation has approved a measure that will allow municipalities to establish and operate spay and neuter clinics. Senate Bill 664-B becomes effective immediately.

#### Vivisectors Beaten in Reno

The Reno City Council has defeated a proposal to give unwanted, unclaimed dogs and cats to the University of Nevada Medical School for research use. The proposal failed on a 4 to 3 vote after what was reported to be a stormy and emotional two hour meeting. Reasons for rejecting the University of Nevada Medical School's request ranged from, in the words of one councilman, "emotion rather than rational" (sic) to another who did not think that "the commodity [dogs] should come that cheap" because "the more costly they are, the wiser they will be used."

#### Massachusetts Passes New Anti-decompression Chamber Bill

On May 24, 1976, the Governor of Massachusetts signed Senate Bill 159, that will restrict the use of Decompression Chambers for the purpose of killing dogs or cats. Section 1 of the Act amends Chapter 140 of the State Code by prohibiting the use of decompression chambers in killing stray or unclaimed dogs. Section 2 of the Act would amend Chapter 272 of the Code by prohibiting the use of decompression chambers, without the owners consent, in the euthanizing of cats. The new law would probably not prevent a decompression chamber from being used if an owner voluntarily surrendered his animal for euthanasia. The new Act is scheduled to become effective August 26, 1976.

### Supreme Court Saves Pupfish

In a 9 to 0 decision, the United States Supreme Court upheld a lower court decision that would result in preserving the rare pupfish from extinction. Pupfish can only be found in one underground pool in Arizona near Death Valley. The underground pool, named Devil's Hole, became part of the Death Valley National Monument in 1952. The pupfish became endangered when local ranchers drilled into, and began pumping water from the underground river that feeds the pool, causing the water level in the pool to drop. When this was discovered the National Park Service brought suit to restrict the pumping. In its decision, the high court held that when the government proclaimed Devil's Hole a national monument in 1952, the federal government reserved the rights to sufficient water to maintain the pool and the pupfish.

### Cockfighting in North Carolina and Virginia

Approximately 250 spectators at a cockfight in Wilkes County, North Carolina were arrested in a surprise raid conducted by North Carolina authorities. In addition to the fans, the raid netted four dead chickens, several pairs of sharpened cockfighting spurs and a three-foot trophy topped by the image of a rooster. The spectators were charged under a state law which makes it a misdemeanor to watch or stage a cockfight.

Eleven citizens of Albemarle County, Virginia, including a former state legislator and several prominent attorneys, are due to go to trial in late July for allegedly participating in an illegal cockfight. The incident is noteworthy because it shows that the popularity which cockfighting enjoys unfortunately extends into well-to-do, well-educated levels of society. Albemarle County is noted for its rolling estates and horse farms owned by gracious-living gentry. The arrests were made at the farm of an individual described as the local "matriarch of the horse crowd."

The incident is also instructive as to the risks which individuals take in opposing or publicizing such matters in a tightly-knit community. The deputy sheriff who made the arrests was placed on probation for six months and a local newspaper reporter who covered the story was suspended for two days, both on flimsy pretenses. (Perhaps more than coincidentally, one of the owners of the paper had attended the fight.)

Cockfighting per se in Virginia is only illegal if it involves gambling, admission fees, or trophies (the latter was allegedly involved in the Albemarle cockfight).

### CAB Still Grounded on Animals in Air Freight Decision

A decision is still pending from the Administrative Law Judge in the Civil Aeronautics Board proceeding which will establish rules governing the transportation of live animals by air freight (Docket 26310). Hearings were held in October, 1975, and an initial decision was expected within three months.

In the meantime, four airlines - Braniff, Continental, Western, and Eastern - have adopted interim rules for the transportation of live animals. The pet industry parties filed complaints objecting to aspects of the requirements regarding health certification and disposition of undelivered animals contained in the interim rules, and asking that such rules be suspended. Fortunately, the Board dismissed the complaints.

The lawfulness of such interim rules will be determined by the outcome of Docket 26310.

### Enforcement of Cruelty Laws Expanded in Virginia

The Virginia State Legislature recently passed a revised Section 18.2 - 399.1 of the State Code that "authorizes all law enforcement officers to enforce" anti-cruelty and other animal laws. This means that police/sheriff departments cannot avoid responsibility for the enforcement of Virginia cruelty laws. In Arlington, Virginia, it has already resulted in the conviction and \$150.00 fine of a man for not properly caring for his pet.

### Killer Whales

A Bill introduced by Senator Warren G. Magnuson (D-Wash.) that would limit the capture of killer whales passed the Senate in March of this year. S. 3130 would prohibit the taking of killer whales without a permit, which is to be issued only for scientific research and even then only if such research is conducted in water and by methods that will not harm the mammal's health. The Bill is currently pending before the House Committee on Merchant Marine and Fisheries.

### Enforcement of Horse Protection Act

APHIS reports that Alabama horse trainer, Baine Lee, was convicted on criminal charges of entering a sore horse in the Kosciusko, Mississippi Walking Horse Show on May 19, 1972. At a hearing before a federal judge, Mr. Lee pleaded "no contest." The judge found him guilty and placed him on one year probation.

In another action, APHIS has charged Kibler Farms of Mt. Orab, Ohio, with two counts of violating the Horse Protection Act. APHIS alleges that a horse entered by the farm in two shows was sored. Under administrative law, the farm is entitled to an oral hearing and is considered innocent unless it admits to the charges or is found guilty by a federal administrative law judge. The maximum civil penalty is \$1,000 per violation.

In still another action, APHIS has charged four individuals with allegedly exhibiting "sored" Tennessee Walking Horses in violation of the Horse Protection Act, at the Championship Charity Horse Show, Montgomery, Alabama.

Upon conviction, the Horse Protection Act provides for both civil and criminal penalties. Maximum penalties for criminal violation are a \$2,000 fine, imprisonment up to six months, or both. The maximum civil penalty is \$1,000 for each violation.

#### New Additions to the Endangered Species List

The Department of Interior has announced that it is adding 159 animals to the official list of endangered species. This new list includes 61 mammals, 38 birds, 2 fish, 24 mollusks, 28 reptiles, and 6 amphibians. It is the first time that the department has moved to enforce the Convention of International Trade in Endangered Species of Wild Fauna and Flora, which the United States initiated in early 1973. Although the Interior Department only chose to take action on 159 species, the international convention lists 216 species. Those species listed by the department will no longer be able to be traded in interstate commerce after June 19, 1976, the date when the new list becomes effective.

Interior's action follows, criticism from environmentalists both inside and outside of government, that the department was dragging its heels on preserving animals from man's activities. They pointed to several significant omissions from the list. These include the California sea otter, the Mexican bears, and the glacier bear. The Interior Department claims that, in the case of the bears and sea otters, further study is needed in order to determine whether or not they are really endangered. Interior turned down the glacier bear saying that it is, "only an uncommon color variety of the black bear."

#### APHIS Moves Against Zoo

William Hampton, a Norco, California dealer in zoo animals has been ordered by a federal administrative law judge to "cease and desist" from violation of the Animal Welfare Act arising out

of the shipment of a Bengal Tiger. Mr. Hampton had requested the hearing after being charged with ten counts of violating the Act by the Animal and Plant Health Inspection Service (APHIS) of the U. S. Department of Agriculture. At the hearing, APHIS agreed to drop three counts in its charge in exchange for Mr. Hampton's agreeing to the judge's order covering the other seven counts. The procedure did not require an admission or denial of guilt. The order forbade Mr. Hampton from operating as a dealer without a USDA license, using substandard shipping cages, neglecting proper storage of feed and bedding for animals, leaving monkeys outdoors without shelter, using substandard monkey cages, allowing his premises to become dirty or fall into disrepair, and from allowing manure to accumulate to the extent that it becomes a hazard. The maximum penalties for violating the order are \$500 per day for each violation.

In another action, APHIS has charged Walter D. Mayer, Westland, Michigan with eleven counts of alleged violations of the Animal Welfare Act. Mr. Mayer, owner of a touring wild animal exhibit, has been charged with, among other things, allegedly maintaining inadequate storage of feed and bedding, cleaning, repairing and trash disposal, and with not having an adequate number of trained caretakers for the animals. Mr. Mayer is entitled to an oral hearing and is considered innocent unless he admits the charge or is found guilty by a federal administrative law judge. The possible penalty upon convictions is an order to cease and desist from further violations. Violation of such an order is punishable by a \$500 fine per violation per day.